TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

SB 3901 – HB 3787

May 19, 2010

SUMMARY OF AMENDMENTS (018668, 018750, 018679, 018678, 015100): Amendment 018668 deletes the language of the original bill and adds new language that makes multiple changes to state tax law, including technical corrections. Amendments 018750, 018679, 018678, and 015100 makes changes to language or adds new language to the bill as amended by amendment 018668.

The section-by-section posture of the bill as amended by the five above amendments is as follows: Sections 1 through 7 of the bill as amended by 018668 were removed with amendment 018750 (the deleted provisions are the removal of single article tax cap, the repeal of $15 sales tax exemption for cable and television services, the repeal of sales tax exemption for cable boxes and other related equipment, and the two percent tax increase on interstate or international telecommunications). Section 8 (as amended by amendment 018750) clarifies that property purchased by service providers cannot be purchased on resale certificates when those items are used by a taxpayer in providing its service. Sections 9 and 10 update the law to reflect previous changes in the definitions of “tangible personal property” and “computer software.” Section 11 declares that local sales tax revenue derived from the rate increase in Sevier County on July 1, 2009, cannot be distributed to the Sevier County Tourism Development Zone.

Sections 12-25 redefine net earnings and make changes to the reporting methods for captive real estate investment trusts (REITs). Section 26 clarifies that tangible personal property is not subject to the reasonable rent provisions for franchise and excise (F&E) tax purposes. Section 27 clarifies that the term “affiliate” can include an individual who owns more than a 50 percent interest in the taxpayer. Sections 28-30 correct cross-reference errors within F&E tax law. Sections 31 and 32 create an F&E tax credit for relocation expenses incurred by companies who become part of the Nashville Medical Trade Center (NMTC). Section 33 creates an F&E tax credit for certain qualified advertising expenses to promote the NMTC. Sections 34 and 35 authorize the Commissioner of Revenue to lower wage and investment criteria applicable to job tax credits and headquarters facility relocation expense tax credits. Section 36 authorizes any airline company with its international, national, or regional headquarters in Tennessee to convert any available and unused job tax credit into a refundable credit. Section 37 extends the refundable headquarters facilities relocation expense credit to any insurance company that is a qualified headquarters facility. Sections 38 and 39 repeal the July 1, 2012, sunset provision applicable to the F&E tax credits for film and episodic television production. Section 40 expands the definition of “industrial machinery” for sales tax exemption purposes to include an expansion to an existing warehouse for certain investment levels.

Sections 41-43 make several changes relative to tax credits for TNInvestcos. Section 44 authorizes integrated customers to qualify for the annual job tax credit. Sections 45- 48 create

F&E tax credits and sales tax credits for certain green energy production facilities. Section 49 distributes state and local tax revenues to retire the debt of a hotel constructed with a convention center. Sections 50-52 make housekeeping changes related to the business tax provisions that were enacted in 2009. Sections 53 and 54 repeal obsolete provisions in the Hall income tax statute that require corporations to give the Department of Revenue (DOR) a list of all shareholders to whom dividends are paid. Section 55 repeals an obsolete provision in the estate tax statute concerning interest due in connection with a refund. Section 56 clarifies that no rollback taxes become due solely as a result of acquisition under the Agricultural, Forest and Open Space Land Act of 1976. Sections 57 and 58 authorize an energy acquisition corporation that acquires an on-going concern engaged in the sale and distribution of propane to enter into agreements for payments in lieu of taxes.

Section 59 (as amended by amendment 018679) authorizes the Commissioners of Revenue, Economic and Community Development (ECD), and Finance and Administration (F&A), with the approval of the Comptroller of the Treasury, to jointly establish a program pursuant under which buildings, facilities, or infrastructure may be developed utilizing a state funding mechanism and pursuant to which the value of tax credits that have been earned by the taxpayer may be applied, in lieu of lease payments, toward the purchase or lease of such property.

Section 60 extends the "best interests of the state" determination concerning availability of tax credits to additional tax incentive mechanisms, including new mechanisms created by this bill as amended. Section 61 creates a sales and use tax credit for qualified disaster restoration projects. Section 62 authorizes a community development financial institution to charge a rate of interest up to 24 percent per year. Section 63 (as proposed with amendment 018678) authorizes franchise and excise tax credits for qualified taxpayers who make capital investments of $25,000,000 or more within a qualified development project considered Brownfield property. Section 64 (as proposed with amendment 015100) removes the limitation requiring job tax credits be authorized only for counties meeting the "enhancement county" definition. Section 65 is the effective date provisions of the bill as amended.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - $49,800,000/Recurring
Increase State Expenditures – $15,100/One-Time
$275,100/Recurring

(Reflected in the Governor's FY10-11 Recommended Budget)

Increase Local Revenue - $14,300,000/Recurring

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Revenue – Net Impact – $16,175,000/Recurring
Increase State Expenditures – $15,000/One-Time/Department of Revenue
$275,100/Recurring/Department of Revenue

Forgone State Revenue – Exceeds $2,412,500/FY10-11 and FY11-12
Exceeds $6,812,500/FY12-13 through FY15-16
Exceeds $5,812,500/FY16-17 and Subsequent Years

Increase Local Revenue – Net Impact – $630,000/Recurring

Other Fiscal Impact – There will be an increase of state expenditures as a result of an appropriation to an industrial development board during FY10-11 for the purpose of capital outlay estimated to exceed $20,000,000. Such increase of state expenditures will be offset over a period of 10 years by lease payments and avoidance of future revenue reductions as a result of the applicable taxpayer forgoing the use of earned franchise and excise tax credits and job tax credits. Contingent funding in the amount of $20,000,000 is included in the Administration Amendment to the appropriations bill. Additional funding in an amount that cannot reasonably be determined will be provided through Fast Track appropriations to the Department of Economic and Community Development included in the Governor's Recommended Budget. If the contingency is not met, full funding for the project will come from Fast Track funds. Utilization of Fast Track funds will reduce the availability of Fast Track funds for other projects by the amount dedicated to this project.

The Governor’s Recommended Budget Document for FY10-11 includes $50,000,000 of state revenue resulting from tax legislation (page A-11) and additional state expenditures of $290,200 for new Tax Auditor positions (page B-13) required to implement the provisions of this bill. There is an additional $85,000,000 of state revenue in the Administration Amendment to the appropriations bill.

Assumptions applied to amendments:

- The additional revenue measures will generate $20,000,000 in gross recurring state revenue. This increase will be offset by reductions in revenue of $3,825,000 from new tax incentives. The net impact of the additional revenue measures and new tax incentives is a recurring increase of state revenue of $16,175,000. The Governor's Recommended Budget included $50,000,000 in recurring state revenue and the Administration Amendment to the appropriations bill included an additional $85,000,000.

- According to DOR, clarifying that property purchased by service providers cannot be purchased on resale certificates when those items are used by the taxpayer in providing its service will increase state and local revenue by $3,000,000 and $950,000 per year respectively (Section 8 as amended by amendment 018750).
- According to DOR, redefining net earnings and the changes applicable to reporting methods for captive real estate investment trusts (REITs) will increase state revenue by $17,000,000 per year (Sections 12 through 25). This item was budgeted at $10,000,000 in the Governor's Recommended Budget.
- Based on information provided by DOR, creating an F&E tax credit for relocation expenses incurred by companies who become part of the Nashville Medical Trade Center (NMTC) will result in forgone state revenue exceeding $1,000,000 per year for the next six fiscal years (FY10-11 through FY15-16). The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Sections 31 and 32).
- Based on information provided by DOR, creating an F&E tax credit for certain qualified advertising expenses to promote the NMTC will result in forgone state revenue exceeding $500,000 per year. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by this provision (Section 33).
- Based on information provided by DOR, authorizing the Commissioner of Revenue to lower wage and investment criteria applicable to job tax credits and headquarters facility relocation expense tax credits will result in forgone state revenue exceeding $100,000 per year. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Sections 34 and 35).
- The fiscal impact resulting from authorizing certain airline companies to receive refunds for any available and unused franchise and excise tax credits is dependent on several unknown factors. As a result, determining a precise fiscal impact for this section is difficult. However, a decrease to state revenue is reasonably estimated to exceed $300,000 per year (Section 36).
- The fiscal impact resulting from the extension of refundable headquarters facilities relocation expense credits to insurance companies that are a qualified headquarters facility is dependent upon multiple unknown factors. As a result, determining a precise fiscal impact for this section is difficult. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year (Section 37).
- Based on information provided by DOR, repealing the July 1, 2012, sunset provision applicable to the F&E tax credits for film and episodic television production will result in forgone state revenue exceeding $4,400,000 per year beginning with FY12-13. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Sections 38 and 39).
- The fiscal impact resulting from expanding the definition of industrial machinery will affect the extent to which industrial machinery tax credits are authorized. Such impact is

dependent on several unknown factors. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year (Section 40).

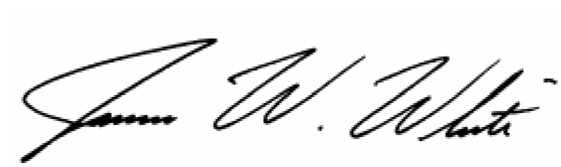
- Sections 41-43 concern tax credits applicable to TNInvestcos. Section 41 expands F&E tax credits to contributions made to the Tennessee Small Business Opportunity Fund. The fiscal impact for this section is unknown and dependent on several unknown factors. However, a decrease to state revenue is reasonably estimated to exceed $500,000 per year. According to DOR, Sections 42 and 43 concern a F&E tax exemption that TNInvestcos are currently authorized to receive pursuant to Tenn. Code Ann. § 67-4-2008(a)(5). As a result, Sections 42 and 43 will have no significant impact to state revenue.
- The fiscal impact from authorizing integrated customers to qualify for annual job tax credits is dependent upon several unknown factors and is difficult to estimate. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year (Section 44).
- The fiscal impact resulting from tax credits authorized for certified green energy production facilities is dependent upon several unknown factors. As a result, determining a precise fiscal impact for this section is difficult. However, a decrease to state revenue is reasonably estimated to exceed $100,000 per year; the decrease to local government revenue is reasonably estimated to exceed $10,000 per year (Sections 45 through 48).
- Based on information provided by DOR, distribution of state and local tax revenues to retire the debt of a hotel constructed with a convention center will result a decrease to state revenue estimated to be $1,000,000 per year and additional forgone state revenue estimated to exceed $200,000 per year (Section 49). The decrease to local government revenue is reasonably estimated to exceed $320,000 per year.
- Based on information provided by DOR, the fiscal impact from allowing energy acquisition companies to enter into agreements for payments in lieu of taxes with local governments will increase local government revenue by approximately $10,000 per year (Sections 57 and 58).
- The Commissioners of Revenue, Economic and Community Development, and Finance and Administration, with approval of the Comptroller of the Treasury, will jointly establish a program in which buildings, facilities, or infrastructure are developed and used for economic development incentives in exchange for a taxpayer's unutilized tax credits. The development will then be leased to a taxpayer who will make lease payments to the state over time via cash payments or by forgoing the use of earned and unutilized franchise and excise tax credits. According to DOR, the state will recoup all funds expended for capital outlay (Section 59 as amended by amendment 018679).
- DOR estimates that approximately $25,000,000 in taxable sales will be subject to the sales and use tax credit disaster restoration projects. Only 6.5 percent of the 7.0 percent state sales and use tax rate will be eligible for determining the proposed credit. As a result, the decrease to state revenue is estimated to be $1,625,000 per year ($25,000,000 x 6.5% = $1,625,000). Local government revenue will not be impacted (Section 61).
- Authorizing franchise and excise tax credits for qualified taxpayers who make capital investments of $25,000,000 or more within a qualified development project considered Brownfield property will result in forgone state revenue exceeding $500,000 per year. The credits will not be awarded unless a determination is made by the Commissioners of

Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by this provision (Section 63 as proposed with amendment 018678).

- Removing the limitation that requires job tax credits be authorized only for counties meeting the “enhancement county” definition will result in foregone state revenue exceeding $112,500 per year. The credit will not be awarded unless a determination is made by the Commissioners of Revenue and ECD that the project is in the best interests of the state and is dependent upon the tax credits authorized by these provisions (Section 64 as proposed with amendment 015100).
- Based on information provided by DOR, the following sections will not result in a fiscal impact to state or local government revenue or expenditures beyond not significant: Sections 9 through 11, Sections 26 through 30, Sections 50 through 56, Section 60, Section 62, and Section 65.
- DOR indicates it will require additional resources within its Audit Division. Four new Tax Auditor 4 positions are anticipated. The associated increase to recurring state expenditures is estimated to be $275,100 per year ($167,300 salaries; $51,200 benefits; and $56,600 other). The associated increase to one-time state expenditures is estimated to be $15,100 (for computers, software, etc.).
- Included in the Governor’s Recommended Budget Document for FY10-11 is $50,000,000 of additional state revenue resulting from 2010 tax legislation (A-11) and additional state expenditures of $290,200 for new Tax Auditor positions required to implement the provisions of this bill (B-13).

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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